IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/02/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

Writ Petition No. 21744 of 2000 and Writ Petition No. 18100 of 2000
and
WMP.Nos.26226 and 30885 of 2000

WP.No:21744/2000

Western Exports India (P) Ltd.,
rep. By its Managing Director
Mr. Jayakar A.Henry
90, Nelakanta Mehta Street,
T.Nagar, Chennai-17 ..Petitioner

-Vs-

1. Indian Overseas bank
rep. By Chief Manager
Esplanade Branch,
Chennai

2. Sujatha Jayakasr

3. The Chairman and Managing Director
IOB, Anna Salai,
Chennai

4. The Top Management Committee, IOB
rep. By its General Manager, Anna Salai, Chennai

5. The General Manager, Southern Territory, IOB
Anna Salai, Chennai

6. The General Manager, IOB
Esplanade, Chennai

7. The Debts Recovery Tribunal
770 A, Anna Salai, 5th Floor, Spencer Plaza
Chennai

8. P.Padmavathi ..Respondents

W.P.No:18100/2000

Sujatha Jayakar ..Petitioner

Vs.

1. Indian Overseas Bank
rep. By Chief Manager
Esplanade Branch,
Chennai

2. The Presiding Officer
The Debts Recovery Tribunal
770 A, Anna Salai, 5th Floor, Spencer Plaza
Chennai

3. The Recovery Officer,
The Debts Recovery Tribunal
770 A, Anna Salai, 5th Floor, Spencer Plaza
Chennai.

4. Wstern Exports (India) Pvt.Ltd.,
No.19, Neelaanta Mehta St.,
T.Nagar,
Chennai-17. ..Respondents.

Writ Petitions preferred under Article 226 of The Constitution Of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner :: Mr.R.Thiagarajan S.C.,
for M/s.R.Ramesh
Mr.Srinath Sridevan (WP.21744)
Mr.K.S.Natarajan (WP.18100)

For respondents :: Mr.V.Shanmugham
Mr.F.B.Benjamin George

:O R D E R

Writ Petition No:18100 of 2000 is filed by Sujatha Jayakar alias P. Sujatha praying this court to issue a writ of certiorarified mandamus calling for the records on the file of the 2nd and the 3rd respondents relating to the publication of the impugned auction notification issued by the 3rd respondent and published in "The Hindu" dated 19.10 .2000 proposing to auction on 20.11.2000 the petitioner's property situated at Old No.31 2nd street, New No.42, Third Street, East Abiraamapuram, Mulapore, Chennai-4 and quash the same and consequently direct the 1st respondent to act as per the directions and guidelines issued by the Reserve bank of India in the Circular dated 27.7.2000 bearing Ref.BP.BC11/21-01-040/99-00 in so far as the settlement of the alleged amounts due by the 4th respondent is concerned and pass such

further or other orders as this court may deem fit.

2. Writ Petition No:21744 of 2000 is filed by the petitioner M/s. Western Exports (India) Private Ltd., praying for the issue of a writ of certiorarified mandamus calling fro the records of the 1st respondent pertaining to its letter dated 6.12.2000 issued to the petitioner herein and quash the same and consequently direct the 1st respondent to consider the petitioner's application dated 8.12.2000 in accordance with "The Reserve Bank of India Guidelines" dated 27.7.2000.

3. Heard Mr.R.Thiagarajan, learned senior counsel appearing for Mrs. Bhavadharani, Mr.R.Ramesh and Mr.Srinath Sridevan for the petitioner in WP.No.21744/2000, Mr.K.S.Natarajan, learned counsel appearing for the petitioner in W.P.No.18100 of 2000 Mr.F.B.Benjamin George for Indian Overseas Bank and Mr.V.Shanmugham for 8th respondent in W.P.No.2 1744 of 2000.

4. With the consent of counsel on either side the writ petitions which are ordered to be posted before this court by the orders of MY Lord Honourable The Chief Justice, were taken up for final disposal. It may not be necessary to refer to the case and counter case of both the parties in detail in view of certain developments, which took place by way of settlement arrived at between the writ petitioners in W.P.No.21744 of 2000 as well as the first respondent Indian Overseas Bank. Hence, the controversy has been reduced considerably in a very narrow and therefore it is not necessary to s et out the details of case and counter case of either side or that of the auction purchaser, who has also got herself impleaded as one of the respondent in W. P.No.21744 of 2000.

5. In W.P.No:18100 of 2000 the writ petitioner has prayed for the issue of a writ of certiorarified mandamus to call for and quash the proceedings of the second and third respondents, namely the impugned auction notification dated 19.10.2000 proposing to hold an auction on 2 0.11.2000. As per the orders of the second respondent-Tribunal, the third respondent issued a publication in one issue of The Hindu dated 29.10.2000 inviting bidders to take part in auction sale of immovable property. The said auction sale is being questioned in this writ petition. Auction sale has been notified as per the Recovery Certificate issued by the second respondent-Tribunal in exercise of powers conferred under Chapter V of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 read with the provisions of the second and third schedule of the Income Tax Act, 1961 and the Income Tax (Certificate proceedings) Rules 1962.

6. It is rightly pointed out by the counsel appearing for the respondents that as against the proceedings of the second respondentTribunal or the action of the third respondent Recovery Officer, remedy if any has to be exhausted under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and not by way of judicial review under Art.226/227 of The Constitution.

7. In Union of India Vs. Delhi High Court Bar Association reported in 2002 (2) CTC page 106, the Apex court while upholding the validity of The

Recovery of Debts Due to Banks and Financial Institutions Act, 1993, held that the parties have to raise objection or dispute or contest on merits or other objection and the same shall be shall the same before the authority constituted under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

8. In Punjab National Bank Vs. O.C.Krishnan and others, reported in 2001 (6) SCC 569, The Apex Court held that remedy under the Act has to be invoked before the Forum constituted under the said Act and not by way of proceedings under Art.226 and 227 of The Constitution. In this respect the Apex Court held thus:-

"5. In our opinion, the order which was passed by the Tribunal directing sale of mortgaged property was appealable under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short "the Act"). The High Court ought not to have exercised its jurisdiction under Article 227 in view of the provision for alternative remedy contained in the Act. We do not propose to go into the correctness of the decision of the High Court and whether the order passed by the Tribunal was correct or not has to be decided before an appropriate forum.
6. The Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and the financial institutions. There is a hierarchy of appeal provided in the Act, namely, filing of an appeal under Section 20 and this fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act."
9. Therefore if the petitioner is aggrieved by the orders or proceedings of the respondents 2 and 3, the petitioner has to work out her remedies under the provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 either by moving the second respondent or by moving The Debts Recovery Appellate Tribunal if such an appeal is maintainable under section 22 of the Act. Hence, while giving liberty to the petitioner to work out remedies under the Provisions of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, this writ petition is dismissed.

10. In W.P.No:21744 of 2000, the petitioner M/s.Western Exports (India) Private Ltd., prayed for the issue of a writ of certiorari to call for the and quash the communication of the first respondent bank dated 6.12.2000 and consequently to direct the first respondent to consider the petitioner's application dated 8.11.2000 in accordance with the Guidelines issued by the Reserve Bank Of India for recovery of dues relating to non performing assets of (NPAs) of Public Sector Banks. It is the main contention of the petitioner that the over all statement being in accordance with the Reserve Bank of India Guidelines for compromise/Settlement of NPAs of Small Scale Sector dated 27th

July 2000, applying to pay Rs.3,19,641/= in full settlement of the first respondent bank, the first respondent by its reply dated 6.12.20 00 after examining the proposal submitted by the petitioner wrote back to the petitioner advising that the petitioner's offer is not acceptable. This is being challenged in this writ petition.

11. However, subsequently and pending the proceedings also certain interim orders were passed and substantial sum namely Rs.27,00,000/= has been deposited to the credit of the writ petition. There has been further exchange of correspondence between the writ petitioner on one hand and the first respondent Bank on the other hand. On 2.8.20002 the petitioner addressed the first respondent Bank offering to pay Rs.38,00,000/= as one time settlement and requested the Bank to accept the same. The said letter reads thus:

"This is with reference to the DRT proceedings and the discussions relating to the same. We are willing to settle through the Court for a sum of RS.38 lakhs as full and final settlement of our dues to your bank provided he Bank is willing to settle the matter as above. Due to unforeseen expenses incurred towards the costly and continuos treatment for my ailing wife and son who are suffering from complicated kidney problems, I have raised this sum of Rs.38 lakhs with very great difficulty. I therefore request that our case may be viewed sympathetically and the amount offered may be accepted as a One Time Settlement which will be paid within a week from your date of accepting our offer."

12. To the said offer set out by the petitioner in its letter dated 2.8.2002, the first respondent Bank replied back accepting the one time settlement offer of Rs.38 lakhs by its reply dated 9.9.2002. This reply reads thus:-

"We refer to your letter dated 2.8.2002 and advise that your One Time Settlement offer of Rs.38.00 lacs is accepted in full quit of our dues against the following terms and conditions:
1) You have to take immediate steps for the release of Rs.27.00 lacs along with interest from High Court which as already been deposited as per the direction and the balance amount of Rs.11.00 lacs is to be paid to us within 15 days.
2) If you fail to pay the amount within the stipulated time interest will be charged for the belated payment at PLR
3) The securities will be released only after receipt of entire compromise amount and any other dues and after getting clearance from High Court and DRT, Chennai.
4) The future expenses including legal expenses are to be borne by you.
5) All the cases pending against the bank is to be withdrawn by you."

13. Thereafter by further letter dated 26.9.2002 the petitioner enclosed a cheque for Rs.11 lakhs while stating that steps have been taken to release 27 lakhs deposited with the Registry of this court to the credit of the Writ Petition. The letter dated 26.9.2002 reads thus:-

"We refer to the above matter and are enclosing herewith a cheque for Rs.11,00,000/= (Rupees Eleven Lakhs only) drawn on the bank of Baroda, Triplicane Branch, Chennai-5 as full and final settlement.
We have also requested our counsel to release the amount of Rs.27,00 ,000/= (Rupees Twenty Seven Lakhs only) deposited with the Registrar, Madras High Court as per the directions of the Honourable High Court. We have further requested our counsel to withdraw all the cases pending before the High Court kindly instruct your counsel to cooperate in the matter."

14. The first respondent Bank also has requested its Advocate to take steps for withdrawing Rs.27 lakhs deposited to the credit of the writ Petition Nos.21744 and 18100 of 2000.

15. The exchange of correspondence between the petitioner Bank and the first respondent bank proves beyond doubt that the petitioner's offer of Rs.38 lakhs as One Time Settlement has been accepted by the first respondent Bank while acknowledging Rs.11 lakhs remitted by the petitioner and agreeing to withdraw Rs.27 lakhs deposited to the Credit of the writ petition with the Registry. In the light of this development the very relief prayed for in W.P.No.21744 of 2000 namely, to quash the reply of the first respondent-Bank and consequently direct the Reserve bank of India to apply the Guidelines for Settlement will not survive any longer. On this short ground Writ petition No.2 1744 of 2000 is dismissed.

16. A memo has been filed expressing consent to pay the amount of Rs.27 lakhs in deposit to the Bank. The sum of Rs.27 lakhs already deposited to the credit of W.P.No:21744 of 2000 in terms of the Order passed by P.K.MISRA,J., which sum was received by the Registry on 8.2.2002 by way of Pay Order dated 8.2.2002 shall be paid to the first respondent bank forthwith as represented by the counsel for the petitioner and the Registrar General of this Court is directed to issue a cheque for Rs.27 lakhs with interest if any accrued if the said amount has been invested forthwith to the first respondent Indian Overseas Bank.

17. Nextly let me take up the most contested point. Mr.R. Thiagarajan, learned senior counsel submitted that the auction proceedings have to be set aside or nullified, while Mr.V.Shanmugham, learned counsel representing the 8th respondent pointed out that pending the disposal of the writ petition No.21744 of 2000 seeking for the relief of mandamus to quash the order of the first respondent-Bank and for a mandamus to apply the Reserve Bank of India Guidelines, this court passed a conditional order to deposit 25% of the decree amount within a period of four weeks besides imposing a condition that if the petitioner fails to deposit the amount within the stipulated time the stay will stand vacated automatically. The writ petitioner failed to remit the said amount before the expiry of four weeks in terms of the order dated 29.8.2001. The writ petitioner failed to comply with the conditional order which resulted in the interim order of stay stands vacated automatically. The Recovery Officer thereafter proceeded with the auction sale by giving due publicity. On 22.1.2002 the auction was conducted and the 8th respondent in W.P.No.21744 of 2000 Ms.T.Padmavathy was the successful bidder. In the public auction held on 22.1.2002, her bid being

Rs.6,50,000/= and she has also deposited Rs.20 lakhs as per the auction conditions. Thereafter the writ petitioner once again moved for stay of confirmation of the sale on 30th of January 2002. The conditional order of stay of confirmation of sale was passed subject to the condition that the writ petitioner deposits a sum of Rs.27 lakhs within a period of one week by order dated 30.1.2002. The writ petitioner has not impleaded the auction purchaser in the said application and thereafter the auction purchaser got herself impleaded in the writ petition. Initially, K.Sampath,J., on 3 0.1.2002 made the interim stay absolute observing that it is open to the auction purchaser to take steps with the Recovery Officer for refund of the amount. Subsequently, K.Sampath,J., modified the earlier order at the request of the auction purchaser and ordered that the interim order already granted is to be continued besides making it clear that it is open to the parties to move P.K.Misra,J., for any relief if they want. Thereafter the matters came to be posted before this court as per orders of the Hon'ble The Chief Justice.

18. According to Mr.R.Thiagarajan, learned senior counsel, since the amount due has been remitted by deposit and the debt has been discharged by payment, the Recovery Certificate issued by the Recovery Officer will not survive and therefore the auction proceedings has to be declared as non est or illegal. Per contra, Mr.V.Shanmugham, learned counsel appearing for the auction purchaser while relying upon the pronouncement of the Supreme Court, rightly contended that the questions whether a right has accrued to the auction purchaser and what is the effect of wiping out of the dues to the Bank? or whether the certificate of recovery still subsists? or what is the right of the auction purchaser? are to be only decided by the Forum constituted under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and not by this Court under Art.226. Mr.V.Shanmugham, learned counsel appearing for the auction purchaser is well founded in this respect.

19. In the circumstances, this court declines to examine the validity or invalidity of the auction sale or as to whether the certificate of recovery still survives or what is the effect of auction sale and what right has accrued to the auction purchaser or whether the writ petitioner could avoid the auction sale already been conducted and all these points are left open to be agitated by either of the parties under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Rules framed thereunder and it is for the said Tribunal under the Act to decide all those controversies advanced before it. This court makes it clear that it is for the parties to work out their remedies in respect of the auction sale, the bid or deposit of amount by the third party-purchaser, 8th respondent herein or whether there could be a confirmation of the sale in favour of the auction purchaser or there could be a confirmation of the sale or other further proceedings, are all to be decided by the said Forum constituted under the Act.

20. This court also hasten to add that it is for the Forum constituted under The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to decide all other controversies or other disputes in respect of the proceedings before it as well as subsequent auction sale and purchase and it is open to the parties to work out whatever remedies available

to them in law in respect of the auction sale or other maters before the Forum constituted under the said Recovery of Debts Due to Banks and Financial Institutions Act.

21. In the result, both the writ petitions are disposed of as above and the WMPs are also disposed of accordingly.

Index:Yes
Internet:Yes

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To

1. Indian Overseas bank
rep. By Chief Manager
Esplanade Branch,
Chennai

2. The Chairman and Managing Director
IOB, Anna Salai,
Chennai

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